

**From:** POLITICO Pro Energy  
**To:** [megan\\_bloomgren@ios.doi.gov](mailto:megan_bloomgren@ios.doi.gov)  
**Subject:** Morning Energy: Methane CRA's fate remains unclear as time runs down — LaFleur queries New England states on market options — House subpanel tackles monument designations  
**Date:** Tuesday, May 02, 2017 4:47:34 AM

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By Anthony Adragna | 05/02/2017 05:43 AM EDT

*With help from Jason Huffman and Annie Snider*

**METHANE CRA PICTURE REMAINS FUZZY:** There's little more than a week left for Congress to nullify Obama-era regulations using the Congressional Review Act, but whether the Senate will be able to ax a BLM rule targeting methane emissions from oil and gas drilling on public lands remains as hazy as ever. Sen. [John Barrasso](#) said last week he was confident his resolution to block the rule would pass, but he doesn't yet appear to have the 50 votes he needs (with Vice President Mike Pence breaking the tie) firmly locked down. Environmentalists and Senate aides hoping to defeat the resolution are eyeing four publicly undecided senators — Democrat [Heidi Heitkamp](#) and Republicans [Rob Portman](#), [Cory Gardner](#) and [Dean Heller](#). (Don't forget, Sens. [Lindsey Graham](#) and [Susan Collins](#) have already signaled their opposition, so Barrasso could only afford to lose one more vote.)

"There are a few key players who have not yet declared their intentions," Robert Dillon, vice president of communications with the American Council for Capital Formation, a big CRA backer, told ME. "The whip operation continues and we continue to encourage members to vote for the CRA." Both Gardner and Portman told ME they were undecided late Monday, and Heather Taylor-Miesle, executive director of the Ohio Environmental Council, said the grassroots continued to push Portman against the resolution: "We had 5,000 people attend a tele-townhall on the issue last week here in Ohio so we know that people are concerned and want the senator to fiercely oppose any efforts to stop the methane rule," she told ME. A spokesman for Senate Majority Leader [Mitch McConnell](#) declined to comment on the CRA's timing, though ME hears rumblings it could slip until next week.

**That comes as a former top Interior official** sent [a letter](#) to Senate leadership warning "repealing this rule through the CRA will impair, if not eliminate altogether, BLM's ability to promote recapture of wasted gas" without Congress stepping in with new legislation. John Leshy, who served as the agency's solicitor from 1993-2001, warned: "Using the blunt instrument of the CRA might make a nice headline, but it could also forever insulate the industry from meaningful, effective regulation on this important subject, unless the Congress could muster the political will to provide new authority in new legislation."

**LET'S MAKE A DEAL?** Day two of FERC's much-watched [technical conference](#) kicks off today at 9 a.m., one day after Acting FERC Chairman Cheryl LaFleur questioned whether New England grid members would be able to reach an agreement with the agency to adapt the wholesale markets to their individual power generation goals by overcoming differences between state energy policy goals, Pro's Esther Whieldon [reports](#). States appear to want FERC to help keep power plants online and offer incentives for new plants to ensure grid reliability, but don't want interference in their policy goals or to be on the hook for subsidizing other states' efforts. LaFleur noted some state officials had expressed a "lack of trust in FERC solutions."

**That comes as New York state Democrats** hammered Gov. Andrew Cuomo's top energy

officials Monday about a nuclear subsidy for upstate plants, questioning its \$1 billion cost in the first two years, whether enough alternatives were considered and why downstate ratepayers are footing the bill, POLITICO New York's Marie J. French [reports](#).

**WELCOME TO TUESDAY!** I'm your host Anthony Adragna, and LCV President Gene Karpinski was the first of many to identify Chris Dudley as the NBA player-turned Republican Oregon gubernatorial nominee. For today: What former professional basketball player later chaired the House Natural Resources Committee? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](#), [@Morning\\_Energy](#), and [@POLITICOPro](#).

**GUIDE TO FEDERAL BUDGET & APPROPRIATIONS PROCESS:** The federal budget process is complicated; brush up on your knowledge so you're ready to act as the budget winds its way through Congress. [Download your guide](#).

**HEARING TO TARGET 'WORST OF THE WORST' OBAMA LAND, SEA GRABS:** Ranchers, lumber companies and commercial fishing operations will all be watching closely this morning when a House Natural Resources Committee panel paints a bull's eye on what Chairman [Rob Bishop](#)'s office describes as the "worst of the worst" examples of President Barack Obama's "excessive use" of the Antiquities Act to lock up more than 550 million acres of land and water with national monument designations. Among the areas to get attention: Bears Ears, in Bishop's home state of Utah; Katahdin Woods and Waters in Maine; Cascade-Siskiyou in Southern Oregon and Northern California; and Northeast Canyons and Seamounts Marine Monument off the coast of New England.

The [event](#), which will feature four witnesses, including Maine Gov. Paul LePage, builds off President Donald Trump's [executive order](#) to have Interior review two dozen national monuments created since Jan. 1, 1996. It kicks off at 10 a.m. in Longworth 1324. [Here's](#) a background memo.

**Groups oppose any rollbacks:** An eclectic group of 450 organizations, ranging from the NAACP to Patagonia to the Center for American Progress, is sending [a letter](#) today to Trump, Interior Secretary Ryan Zinke and Commerce Secretary Wilbur Ross urging them to oppose "any efforts to remove or decrease protections for any national monuments." They'll present it at a 9:30 a.m. press conference held by House Natural Resources Ranking Member [Raul Grijalva](#) ahead of the hearing.

**OOPS:** Trump's EPA team appears to have left up the agency's climate change page in Spanish, after removing the English-language version as part of a larger overhaul announced Friday night. Link [here](#) and [a screenshot](#) if it goes away.

**AND... WE'RE OFF!** Speaking at a Consumer Energy Alliance event in Houston, Zinke signed [a secretarial order](#) Monday directing BOEM to start a review of the agency's five-year plan for offering oil and gas leases in federally controlled waters, Pro's Esther Whieldon [reports](#). "We're going to look at everything," Zinke said of the review, which he said previously could take two years. He also complied with Trump's directive to review the well control rule for offshore drilling.

**Ally nabs new Interior position:** Zinke [announced](#) Vincent DeVito, the treasurer of his former congressional leadership PAC, would be in charge of coordinating the agency's energy policies across its nine bureaus, Esther [reports](#). "We have to look at ourselves through to make

sure we're streamlined and our regulations aren't arbitrary," Zinke said. It's a newly created position that will not require Senate confirmation.

**For your radar:** Zinke is delivering remarks at 9:15 a.m. at the [National Tribal Energy Summit](#) at the JW Marriott Washington.

**BEACHHEAD MEMBER GETS BIGGER DOE ROLE:** Daniel Simmons, a former vice president for policy at the libertarian-leaning IER, today becomes acting assistant secretary for the Office of Energy Efficiency and Renewable Energy, Pro's Darius Dixon [reports](#). Simmons can only hold the position on a temporary basis without being nominated and confirmed by the Senate.

**MAIL CALL! LET'S HATCH A PLAN, MR. PRUITT:** Four Senate EPW Democrats — [Tom Carper](#), [Sheldon Whitehouse](#), [Ed Markey](#) and [Jeff Merkley](#) — sent [a letter](#) to EPA Administrator Scott Pruitt Monday seeking documents concerning the administrator's decision last week to [pull out of an Oklahoma Republican Party gala](#). They also asked Pruitt to describe what steps he'll take to comply with the Hatch Act, which aims to stop federal workers from politicking while on duty, going forward.

**SCHUMER HIGHLIGHTS EPA PROTECTION IN OMNIBUS:** Senate Minority Leader [Chuck Schumer](#) touted two key Democratic omnibus victories Monday: the preservation of 99 percent of EPA's budget "so their quest to keep our water and air clean will be able to continue" and the permanent extension of health benefits for coal miners. He praised West Virginia Sen. [Joe Manchin](#) as "relentless, even after disappointment after disappointment, at holding the Senate's feet to the fire and making sure this was done." Speaking of which, ME's never seen anything quite like this before: A [letter](#) from Speaker [Paul Ryan](#) praising Rep. [David McKinley](#) for his "relentless" efforts at securing the compromise.

**DRINKING WATER VIOLATIONS ARE DE RIGUEUR:** Roughly a quarter of all Americans are served by drinking water systems that violated federal drinking water standards in 2015, according to a report out later today from the Natural Resources Defense Council. The report, which calls for greater enforcement and investment in the drinking water sector, found nearly 80,000 violations at systems across the country, with small, rural systems accounting for more than half of those.

**No cop on the beat:** As last year's failure in Flint, Mich., illustrated, EPA and states are loath to penalize water systems that violate the law. The NRDC report found that nine out of 10 violations were faced no formal action, and just 3.3 percent resulted in financial penalties.

**COMMENTS READY?** EPA's water office will [hold](#) a 3-hour-long virtual public listening session today as it solicits suggestions for regulations to scrap, change or replace. With two weeks left until the formal comment deadline, more than 35,000 public comments have rolled in to the [docket](#).

**SEE YOU IN COURT!** A group of children seeking to force the federal government to take drastic action on climate change should be allowed to make their case in court, a magistrate judge assisting with the case recommended Monday. As Pro's Alex Guillén [reports](#), the Trump administration asked a federal district court judge in March to allow the 9th Circuit Court of Appeals to consider tossing the case before it went to trial before her. District Court Judge Ann Aiken must now decide whether to agree with Magistrate Judge Thomas Coffin's [recommendation](#) or give her blessing to the Trump administration's early appeal effort.

**WORK BEGINS ON COAL ASH GUIDANCE:** EPA is currently working on the needed guidance to review and approve states' coal ash permitting programs, Administrator Scott Pruitt wrote in [a letter](#) to Nevada Gov. Brian Sandoval. As Pro's Alex Guillén [reports](#), a December water infrastructure package included a coal ash [compromise](#) that shifted permitting responsibilities to the states, which must first get EPA approval of their programs' broad contours, while the agency gained more enforcement powers and other concessions.

**DID YA GET THAT MEMO?** Sen. [Claire McCaskill](#) sent [a letter](#) to Energy Secretary Rick Perry seeking information about how his agency is addressing concerns raised in [a GAO report](#) about its ability to identify and prevent contracting fraud. "Oversight challenges with management of fraud risk and improper payments exist across the DOE complex," she wrote. "It is apparent that the risk is actually unknown because DOE does not adequately assess or oversee it." The Energy Department "generally concurred" with a series of the GAO recommendations, but nevertheless rated its fraud risk as "low" and disagreed with a number of the report's conclusions.

**STATES RATE TOP ENVIRONMENTAL RESEARCH NEEDS:** Top environmental and public health challenges for states include water quality, remediation of contaminated sites, and nutrient and nonpoint water contamination, according to [a survey of state needs](#) released Monday by the Environmental Council of the States.

**RECORDS SOUGHT OF NOAA CHAT RECORDS:** The Cause of Action Institute has filed [a FOIA request](#) seeking NOAA employee communications during a recent New England Fishery Management Council meeting April 18-20. "CoA Institute is concerned that NOAA may be unlawfully destroying records of these communications," the request said. That's because it appears certain Google Chat records may not have been retained. The FOIA marks the [latest attempt](#) to seek records of chat communications from federal employees.

**McKIBBEN GETS ACADEMIC TREATMENT:** There's now a [full-length academic paper](#) looking at the role of Bill McKibben on the U.S. climate debate. It concludes that while divestment itself achieved "little traction," previously marginalized liberal policy ideas "gained increased attention and legitimacy."

**Meanwhile, the Independent Petroleum Association of America** is promoting [another paper](#) that attempts to quantify the costs of divestment to students and faculty at both public and private institutions.

**MOVER, SHAKER:** Christopher Smith, former assistant secretary for fossil energy at DOE under President Obama, has been named Baker Institute Advisory Board Fellow in Energy Studies at Rice University's Baker Institute for Public Policy.

## QUICK HITS

- 50 percent of US coal jobs are in just 25 counties. [Quartz](#).
- Britain's energy supply is in jeopardy after Brexit, warn MPs. [Guardian](#).
- Top Ethics Officer Challenges Trump Over Secret Waivers for Ex-Lobbyists. [New York Times](#).
- Unions praise McConnell for deal to fix health benefits of retired miners. [Lexington](#)

[Herald-Leader](#).

— Big short position on biofuels generated profit for Icahn's refiner. [Reuters](#).

— Oil Price Optimism Wears Off as Texas Wildcatters Drill On. [Bloomberg](#).

## HAPPENING TUESDAY

10:00 a.m. — "[Consequences of Executive Branch Overreach of the Antiquities Act](#)," House Natural Resources Subcommittee on Federal Lands, 1324 Longworth

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on federal lands, 366 Dirksen

12:00 p.m. — "[Nuclear for the Next Generation](#)," The Nuclear Energy Institute and Partnership for Global Security, National Press Club, 529 14th St. NW

12:00 p.m. — Alston & Bird [panel](#) on pharmaceutical waste, 950 F Street NW

1:00 p.m. — "[Tipping Points in Global Environmental Policy](#)," World Resources Institute, James A. Harmon Conference Center, 10 G Street NE, Suite 800

## THAT'S ALL FOR ME!

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/05/methane-cras-fate-remains-unclear-as-time-runs-down-022622>

## Stories from POLITICO Pro

### FERC's LaFleur presses New England states on market options [Back](#)

By Esther Whieldon | 05/01/2017 06:15 PM EDT

Acting FERC Chairman Cheryl LaFleur Monday questioned whether the New England grid members could overcome their state policy differences and cut a deal with FERC to adapt the wholesale markets to their individual power generation goals.

Some of the ISO New England states have required their utilities to purchase renewable energy from wind farms or hydroelectric plants, and Connecticut is considering mandates to support its nuclear power plants. Those requirements have jolted the wholesale power markets — potentially forcing FERC to step in with new market rules to mitigate the price impacts, or back down and allow the state subsidies that could push some fossil fuel plants into retirement.

LaFleur noted that the state officials who were participating in Monday's discussions or sent in comments had expressed a "lack of trust in FERC solutions." While the states want the wholesale market to help keep power plants online and offer incentives for new plants to ensure grid reliability, they don't want the market to interfere with their policy goals.

"Do you think there's a way to define what the states want and price it, or do the states want by definition the ability to choose?" LaFleur said.

"There's a lot of value in having ISO run markets," said Jeffrey Bentz, director of analysis for the New England States Committee on Electricity, a group that represents the governor of the six New England states. But states are still undecided on what they want more broadly, he said. "We get that question, we have to answer it. The ball's in our court," he said.

Bentz and officials from New Hampshire and Connecticut said in addition to their wariness over FERC rule changes, cost is an issue, since they did not want their consumers to be subsidizing policy goals in other states.

"What I want is not to pay for Massachusetts' and Connecticut's policies, bluntly, so that shows you the dynamic there," said Robert Scott, a commissioner on the New Hampshire Public Utilities Commission.

"I'll agree with you there actually," said Rob Klee, a commissioner of Connecticut's Department of Energy and Environmental Protection.

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### **Assembly Democrats not satisfied with administration's answers on nuclear subsidy**

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By Marie J. French | 05/01/2017 05:27 PM EDT

ALBANY — Assembly Democrats hammered Gov. Andrew Cuomo's top energy officials during a hearing on Monday about a subsidy for upstate nuclear plants that took effect a month ago.

The lawmakers questioned whether the cost — about \$1 billion in the first two years — is necessary, what alternatives were considered and why downstate ratepayers are footing the bill.

Not all of those questions were satisfactorily answered, said Assemblyman Jeffrey Dinowitz, who chairs the Corporations, Authorities and Commissions Committee. Dinowitz has [raised concerns about Exelon, which operates the plants, making a profit from the subsidy](#), as opposed to the funds being used for operational costs to keep the plants open.

He said his questions about that possibility were not answered by interim Public Service Commission chair Gregg Sayre.

"He didn't have a number," Dinowitz said. "It's a bailout. There's no debate about that, the question is how big the bailout is and we don't have the answer on that. That's what I wanted to know ... How much is going directly into the pockets of the company?"

Sayre pointed to Exelon's contention that it needed \$50 per megawatt hour to make operating the plants viable. The combined price of the zero emissions credits and expected revenues for the first two years of the subsidy is slightly lower than that — about \$48 per megawatt hour.

Dinowitz pressed the point with Sayre, asking how much would be profit.

"We don't know exactly how much is profit," Sayre said, adding as Dinowitz continued his questioning, "We don't have a dollar amount."



The subsidy helps keep open four upstate nuclear reactors, three of which were in danger of closing. It was approved in August as part of the state's Clean Energy Standard, which mandates that the state get to 50 percent renewable electricity by 2030. Ratepayers around the state began paying for the zero emissions credits, or ZECs, in April.

The subsidy has been [challenged in court](#) by competing generators and an environmental group.

As lawmakers pushed for answers Monday, Cuomo officials acknowledged the difficulty of estimating the subsidy's final price. They also said siting and cost would make replacing the nuclear plants with renewables impossible in the near-term.

Opponents of the nuclear subsidy, including a coalition of environmental and good government groups behind the "Stop the Cuomo Tax" campaign, have argued that the nuclear plants can be replaced by renewable energy in a measured way. Assembly Democrats asked whether such an alternative had been considered.

Sayre said replacing all of the upstate nuclear plants — which supply about 3,200 megawatts of electricity — with renewables would cost \$100 million more annually than the subsidy. He based that figure on a very rough estimate comparing the cost of zero emissions credits for nuclear versus renewable energy credits, or RECs. He said the cost would be even greater in the future as renewable energy credits are expected get more expensive as easier-to-site projects are completed and they get pricier.

Sayre and NYSERDA president and CEO John Rhodes said it would be nearly impossible to site that much renewable capacity in a short period.

"It would've been that much more and it would've gotten worse — had we been able to site them, which of course we couldn't have done in a few months," Sayre said.

Subsidy opponents have emphasized the \$7.6 billion cost over 12 years of the plan. The subsidy will cost \$483 million annually in the first two years and is recalculated every two years. The administration offered its own estimate of \$2.8 billion, based on forecasted increases in energy prices, in late March.

Questioned by lawmakers about the certainty of such forecasts, Sayre said it was "crazy" to try to estimate energy prices 12 years in the future.

"We don't know what it's going to cost. Nobody does," Paul Agresta, the PSC's general counsel, later said.

Lawmakers also raised concerns about whether the administration has made plans for the eventual closure of the plants after the 12-year subsidy ends and the plants come up for their license renewals.

"What is the plan?" asked Assemblywoman Pamela Hunter, a Democrat from Syracuse. "I'm talking about particulars, about decimating an actual community... what is the plan for closure so communities aren't crushed?"

Sayre said there's 12 years to plan for that transition rather than a few months as the alternative.

"Your planning contingencies should have anticipated this by many years, instead of coming up on it like a bug on the windshield," said Assemblyman Steve Englebright, who chairs the Environmental Conservation Committee.

The Assembly Democrats who called the hearing, most of them from downstate, also focused on the cost of the subsidy for ratepayers in their communities when the economic benefits of the jobs saved are all upstate. The ZECs are charged on the basis of how much each energy a ratepayer uses. Since downstate consumes more of the electricity in the state, much of the subsidy comes from downstate ratepayers.

"If we use the social cost of carbon ... but we don't factor in economic development, jobs, then the cost is going to be on downstate ratepayers," said Assemblywoman Amy Paulin, who chairs the Energy Committee.

The Cuomo administration has argued that everyone in the state benefits from the avoided carbon emissions because of the subsidy, making it fair to distribute the costs equally.

It's not clear what, if any, action the Assembly Democrats will take on the nuclear subsidy. Senate Republicans have shown no interest in thwarting the subsidies, as their members represent communities near the plants.

Assemblyman Brian Kavanagh, chair of the Consumer Affairs and Protection Committee, said the lawmakers would review information provided just minutes before the hearing and then decide.

"It's still an open question how this program goes forward," he said at the end of the hearing.

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## **Trump orders Interior to launch national monument reviews** [Back](#)

By Esther Whieldon | 04/26/2017 11:48 AM EDT

President Donald Trump today ordered his administration to consider whether to shrink or eliminate national monuments that have placed millions of acres of federal land off limits to development.

Trump signed an executive order directing Interior Secretary Ryan Zinke to review two dozen monuments that were created since the Clinton administration. The president also asked Zinke to come up with possible legislative fixes to the 1906 Antiquities Act, which gives presidents wide latitude to establish national monuments on federal lands.

At the signing at the Interior Department, Trump said former President Barack Obama had abused the Act to implement a land grab that placed 265 million acres under the control of the federal government.

"Today we are putting the states back in charge," Trump said

Conservation groups [worry](#) Trump and Zinke could weaken the underlying law that has been a conservation tool for 16 past presidents and potentially open up sensitive areas to fossil fuel development. Legal experts say it is unclear whether Trump could fully revoke previous monument designations, but he may be able to shrink the size of protected areas. Congress



would have to implement any changes to the Antiquities Act itself.

Ahead of the signing, Zinke said "somewhere along the way, the Act became the tool of political advocacy rather than public interest, and it is easy to see why some designations are viewed negatively by those most impacted."

**WHAT'S NEXT:** Zinke is directed to come back with an interim report within 45 days and a final report in 120 days, and any actions Trump takes as a result are likely to face legal challenges, especially if he tries to revoke previous designations.

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### **Zinke starts offshore leasing program review** [Back](#)

By Esther Whieldon | 05/01/2017 03:52 PM EDT

Interior Secretary Ryan Zinke signed a secretarial order today directing BOEM to start a review of the agency's five-year plan for offering oil and gas leases in federally controlled waters.

The move follows President Donald Trump's Friday [executive order](#) directing the agency to launch the review of the leasing plan set in place by the Obama administration.

"We're going to look at everything," Zinke said before signing the order at a Consumer Energy Alliance event in Houston, which was streamed on Facebook.

**WHAT'S NEXT:** Zinke told reporters last week the review of the offshore plan could take two years to complete.

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### **Zinke taps political ally to coordinate Interior energy work** [Back](#)

By Esther Whieldon | 05/01/2017 04:49 PM EDT

Interior Secretary Ryan Zinke today named the treasurer of his former congressional leadership PAC to a newly created position coordinating the agency's energy policies across its nine bureaus.

Vincent DeVito, a Boston-based energy lawyer, will be counselor to the secretary for energy policy, where he will be responsible for ensuring all the agencies are on the same page, Zinke said at a Consumer Energy Alliance event in Houston, which was streamed on Facebook.

Between the Fish and Wildlife Service, BOEM, BSEE, BLM "and all the different departments I have, it's confusing for me," Zinke said.

"So I just need a single point of contact. ... We have to look at ourselves through to make sure we're streamlined and our regulations aren't arbitrary," he said.

When Zinke was a member of the House, DeVito, a partner at Bowditch & Dewey, was listed as treasurer for Zinke's leadership PAC, the Supporting Electing American Leaders or SEAL PAC.

DeVito has worked on a number of energy issues, including on [pipelines](#). He represented conservation land trusts in opposing Northeast Energy Direct — a project Kinder Morgan withdrew its federal application in May 2016.

DeVito also worked in the George W. Bush administration as Department of Energy's general counsel's office and as DOE's U.S. Assistant Secretary of Energy for Policy and International Affairs.

**WHAT'S NEXT:** DeVito does not require Senate confirmation for his newly created position, and Zinke did not provide any indication of when President Donald Trump would nominate more senior leaders at Interior.

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### **DOE beachhead member lands senior EERE post** [Back](#)

By Darius Dixon | 05/01/2017 05:30 PM EDT

The Institute for Energy Research's Daniel Simmons will take up a leading post at the Department of Energy as the acting assistant secretary for the Office of Energy Efficiency and Renewable Energy, the agency said in an email to staff today.

DOE said Simmons, a former vice president for policy at the libertarian-leaning IER, would take the role of principal deputy assistant secretary for the office effective today. However, without an EERE assistant secretary who has been nominated and confirmed by the Senate, Simmons can only hold the position on a temporary basis.

DOE confirmed Simmons' appointment.

Simmons was a member of President Donald Trump's transition and beachhead teams at DOE. Before joining IER, he directed the Natural Resources Task Force at the American Legislative Exchange Council.

Steven Chalk, who had served in the position for the past few months, will now return to his role as the deputy assistant secretary for operations, according to the email.

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### **Pruitt won't attend Oklahoma GOP fundraiser** [Back](#)

By Annie Snider | 04/27/2017 09:59 AM EDT

EPA Administrator Scott Pruitt will not attend a May 5 Oklahoma GOP fundraiser because of a flier touting his appearance, he said this morning.

"We're not going to be able to attend because of the invitation that was sent out," Pruitt told Fox News Radio host Brian Kilmeade.

Pruitt noted that his attendance had been approved in advance by EPA's ethics office, but it was the flier, which used his title and promoted remarks he would make about his EPA job, that "prevented my attendance."

Sen. [Sheldon Whitehouse](#) (D-R.I.) this week alleged that Pruitt's appearance would violate the Hatch Act, the law limiting political activities by presidential appointees and other government officials, and asked the U.S. Office of Special Counsel to investigate.

In the radio interview, Pruitt was asked whether he will urge Trump to exit the Paris climate change agreement. "Without a doubt, yes," he responded.

"It's just a bad business deal, it's something we need to exit. We need to stay at the table, we need to show the leadership to the rest of the world as we already are, but Paris is ... an America last strategy as opposed to an America first strategy," he said.

After an uproar over previous comments about the role carbon emissions play in climate change, Pruitt today acknowledged that "climate change is occurring and human activity contributes to that, carbon contributes to that." But, he said, "we can't measure with precision the amount of human activity, what it contributes to that climate change."

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### **Let kids' climate suit go to trial, judge recommends [Back](#)**

By Alex Guillén | 05/01/2017 04:21 PM EDT

A federal magistrate judge today said that a group of children seeking to force the federal government to take drastic action on climate change should be allowed to make their case in court.

The Trump administration, backed up by the oil and manufacturing industries, in March asked a judge in the U.S. District Court in Oregon to let them leapfrog her and ask the 9th Circuit Court of Appeals to toss out the case before it goes to trial.

In a 16-page [recommendation](#) today, Thomas Coffin, a magistrate judge assisting with the case, recommended that District Court Judge Ann Aiken reject the administration's request. Aiken [concluded](#) last year that there were enough questions to merit a trial.

Many of the legal questions are inextricably tied to scientific questions about climate change's causes and risks, as well as the government's past and current efforts to curb greenhouse gases or encourage fossil fuel development, Coffin wrote. A trial would allow the Trump administration and industry groups to present any evidence against climate change and its risks in a public forum, he added.

The children behind the lawsuit argue that the government has violated a public trust doctrine by knowing of climate change for decades but not doing enough to combat the threat. The Obama and Trump administrations have rejected that argument.

The Trump administration could still ask the 9th Circuit to get involved, but officials would have a much harder time if Aiken agrees with Coffin.

**WHAT'S NEXT:** Judge Aiken must decide whether to agree with Coffin's assessment or give her blessing to the Trump administration's early appeal effort.

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## **Pruitt says EPA working on plans to approve states' coal ash programs** [Back](#)

By Alex Guillén | 05/01/2017 05:17 PM EDT

EPA is working on its procedures for reviewing and approving states' coal ash permitting programs, Administrator Scott Pruitt said in a Friday [letter](#).

A water infrastructure package that was signed into law in December included a bipartisan compromise on coal ash regulation that came in response to EPA's 2014 regulation on coal ash, a toxic byproduct of burning coal for electricity. The [compromise](#) shifted permitting responsibilities to the states, which must first get EPA approval of their programs' broad contours, while EPA gained more enforcement powers and other concessions.

EPA is currently working on the needed guidance for states to seek such approval, Pruitt wrote in a letter to Nevada Gov. Brian Sandoval.

"EPA has started developing guidance for states about how EPA expects to review and approve state applications to operate permit programs and allow flexibility in individual permits in lieu of the national standards," Pruitt wrote.

The topic was discussed at a recent gathering of state environmental officials, and the agency plans to go into technical detail with the Association of State and Territorial Solid Waste Management Officials, Pruitt added.

**WHAT'S NEXT:** EPA will develop draft guidance and may seek public input before issuing final guidance on how it will review state submissions.

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## **Bipartisan coal ash provision included in final WRDA** [Back](#)

By Alex Guillén | 12/05/2016 04:28 PM EDT

The final version of the [Water Resources Development Act](#) released today by House and Senate negotiators includes a tweaked version of language passed earlier this year by the Senate that would change the permitting and enforcement regime for EPA's coal ash rule.

The language will require states to get EPA approval for their coal ash disposal permitting plans, and the agency will also gain more enforcement powers, on top of potential citizen lawsuits.

"This new permitting authority fixes the main problems with the recent coal ash regulation issued by the Environmental Protection Agency, by removing citizen suits as the sole means of enforcement and allowing states to tailor permit requirements on a case-by-case basis," Sens. [Jim Inhofe](#), [Joe Manchin](#), [Shelley Moore Capito](#) and [John Hoeven](#) said in a joint statement.

The provision won bipartisan backing, although various environmental groups, including the Sierra Club, Environmental Integrity Project and the Waterkeeper Alliance, raised issues with the language.

The new language would also extend EPA's timeline to review authorized state programs from

every five years to every 12 years. And it gives EPA more time to review state programs, includes language allowing states to ask EPA to review a neighboring state's program, and requires EPA to operate a backstop permit program for states without authorized programs.

The bill is expected to hit the House floor this week.

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## **Conservatives demanding details on federal workers' encryption use** [Back](#)

By Andrew Restuccia | 02/14/2017 03:00 PM EDT

Republicans in Congress and their conservative allies are demanding details about federal workers' use of encrypted messaging apps, part of a broader counterattack on employees suspected of opposing President Donald Trump's agenda.

Congressional Republicans are also pondering changes to longstanding laws that protect government workers, further stoking fears among some federal employees that the new administration's supporters are out to squash dissent.

Republicans on the House Science Committee took up the cause on Tuesday by [asking](#) EPA's inspector general to review reports that agency employees are using an app called Signal, which allows people to exchange encrypted text messages and phone calls. POLITICO [reported](#) this month that a group of fewer than a dozen EPA employees were using the app to discuss what they would do if Trump's political appointees flout the law or delete valuable scientific data.

The anti-Trump resistance has infuriated Republicans, who fear that dissenters in the government could undercut the president's policy proposals by unleashing even more embarrassing leaks. They also contend that the use of encrypted messaging circumvents federal record-keeping laws — an argument Science Chairman [Lamar Smith](#) (R-Texas) echoed in Tuesday's letter.

"[T]he Committee is concerned that these encrypted and off-the-record communication practices, if true, run afoul of federal record-keeping requirements, leaving information that could be responsive to future Freedom of Information Act (FOIA) and congressional requests unattainable," wrote Smith, who organized the letter to the IG. The panel has jurisdiction over many cybersecurity issues.

Outside conservative groups have launched similar efforts.

Citing POLITICO's story, the Cause of Action Institute, a right-leaning watchdog group, filed a request under the Freedom of Information Act this month seeking EPA employees' communications using Signal. "The bottom line is: An encrypted app is basically a way to avoid transparency," Institute Assistant Vice President Henry Kerner said in an interview.

It's not just encryption that is raising eyebrows. Republican research firm America Rising filed a FOIA request this month seeking all emails sent by John O'Grady, a top union official at the EPA, that "mentions or refers to President Trump."

The FOIA request came in response to O'Grady's [comments](#) to The Washington Post that Trump's decision to firing then-acting Attorney General Sally Yates "sends kind of a chilling

effect" through agencies. O'Grady did not respond to a request for comment.

"The public is entitled to know whether career federal government employees are engaged in partisan politics on the taxpayers' dime," said Allan Blutstein, vice president of FOIA operations at America Rising.

EPA employees said they are not using Signal for official government business, and they raised concerns that they're being targeted because they are critical of Trump.

"I don't think anybody can dictate which apps we use on our personal time, for personal conversations," one EPA employee told POLITICO.

The debate comes as employees across the government — political appointees and career officials alike — are increasingly relying on encrypted messaging apps, fearing repercussions if their private conversations are made public.

National security officials have long used encrypted mobile phone software like Signal and WhatsApp to communicate with reporters and other staffers. Signal frequently [comes up in articles advising people](#) how they can [communicate free](#) of snooping from government officials or hackers, especially following the massive leaks of stolen Democratic Party emails that roiled last year's presidential election.

Trump's appointees have gotten into the act, too: The Washington Post [reported](#) this week that administration staff members are using an app called Confide, which deletes messages once they are read, because they're afraid of being accused of leaking to the press. That's also a threat to transparency and accountability, argued Tom Fitton, president of the conservative activist group Judicial Watch, in an interview with POLITICO on Tuesday.

"If they're conducting government business via an application that destroys records, that's a problem that needs to stop," said Fitton, adding that the administration needs to either train its staff on the issue or send them a reminder. He added that the Trump administration is "asking for a lawsuit from either Judicial Watch or someone else if they don't get their act together on these records policies."

Asked if the House Science Committee will pursue a similar probe of White House staffers' use of encrypted messaging apps, spokeswoman Kristina Baum declined to make any commitments. But she said the panel "intends to continue to monitor" cyber issues.

The growing tension across the government has some career employees worried that Republicans will try to make radical changes to laws protecting federal workers — a move that could make people more fearful to speak out against Trump. Trump has already imposed a freeze on most federal hires and has promised to reduce the size of the workforce.

"Frankly, the climate has shifted rather dramatically and we've gone from a chief executive who respects civil servants to a rather bombastic, disdainful chief executive who unfortunately empowers their disparagement," Rep. [Gerry Connolly](#) (D-Va.) said in an interview.

Rep. [Jason Chaffetz](#) (R-Utah), chairman of the House Oversight Committee, is eyeing a major overhaul of the civil service system. He has discussed phasing out pensions for new government employees, instead relying on a defined-contribution plan like a 401(k), and has advocated making it easier to fire problem workers. Chaffetz reportedly talked about some of



these issues during a recent meeting with Trump.

Connolly said he's concerned that the Republican Congress could win enough support to move a bill gutting civil service protections. "It is very alarming and I think frankly very destructive in terms of the fabric of a free government and a free society," he said.


In the Senate, lawmakers are also considering changes to civil service laws, but Sen. [James Lankford](#) (R-Okla.) said he is eyeing targeted tweaks that can win bipartisan support, such as efforts to improve the hiring process.


"If we can keep it small and we can keep it targeted, I think we can move it through unanimous consent," said Lankford, who chairs the Homeland Security and Governmental Affairs Committee's panel on regulatory affairs and federal management. "We need to be better at hiring. If we're better at hiring we don't have to worry about firing."


*Alex Guillén and Eric Geller contributed to this story.*


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